IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5569 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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L.K.KRIPALANI - Petitioner(s)

Versus

DISTRICT EDUCATION OFFICER AHMEDABAD CITY & 3 - Respondent(s)

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Appearance :

MRS VIDHATRI PAREKH for Petitioner(s) : 1,
MR DIPAN DESAI, AGP for Respondent(s) : 1 - 3.
NOTICE SERVED for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 08/02/2006

ORAL JUDGMENT

Draft amendment granted.

2.The short facts of the case are that the petitioner was

working with Mount Carmel High School, Gandhidham and she has put in about 30 years of service and retired on 31.05.2002 as teacher. The petitioner applied for pension. However, pension was not properly fixed and therefore the petitioner approached to this Court by preferring the present petition for the direction to the respondent authority to fix the pension of the petitioner after taking into consideration the period from 08.07.1971 to 31.07.1976 and until the petitioner is retired.

3. It appears that pending the petition, on 14.03.2005, this Court (Coram : Dr. J. N. Bhatt, J. - as he then was) passed the order as under :

> "Upon matter being called out during the course of hearing, it was noticed that Respondent No.4-Principal is obliged to send the relevant and necessary papers for the purpose of calculation of pensionary benefits alongwith the service book and on receipt of such, the process shall start and again the learned AGP Mr.Bhatte has stated that the Government-Director of Pension and Provident Fund at Gandhinagar has not received thus far such service book and such other papers. It is, therefore, by way of interim order, it is directed that the Respondent No.4 shall sent all necessary and relevant papers along with the service book to the Respondent No.2 within a period of two weeks from today, so that the pensionary benefit process could be immediately and expeditiously started and on receipt of such papers along with service record and service book he Respondent No.2-Director of Pension and Provident Fund at Gandhinagar shall start the process and shall conclude within a period of one month from the receipt thereof failing which, the further appropriate order shall be passed."

Thereafter, it appears that the pension of the petitioner is fixed and it is not now in dispute. The pension of the petitioner is fixed after taking into consideration the period from 08.07.1971 to 31.07.1976 and therefore, the principle relief of the petitioner for refixation of the pension after taking into consideration the aforesaid period of service does not survive.

4. The only aspects, which is now pressed by the learned counsel for the petitioner is the interest @ 18% from 01.06.2002 to 01.09.2005, i.e. the date from which the petitioner was entitled to the pension till the amount is disbursed after refixation of the pension and therefore, it has been submitted that this Court may consider the matter for awarding of the interest as the amount was not made available to the petitioner during the aforesaid period.

5. Mr. Desai, learned AGP is unable to explain the delay caused for fixation of pension. In any case, the learned AGP is unable to dispute the proposition of enjoyment of money by the State Government during the period when the pension amount was not disbursed.

6. The awarding of interest in a matter where retiral dues of the concerned employee are not disbursed well in time can broadly be divided into two parts.

One aspect would be, if there is any delay due to lethargy or lapse on the part of the concerned authority in not fixing the pension or disbursing the

pension amount or retiral dues within some reasonable time, the Court may award interest by way of penalty but, such order for interest would be not only penal, but it would also be having the characteristic of setting an example, with a view to see that such delay is not repeated in future by the authority. At the time when such interest is to be awarded by way of penalty or for setting an example, the Court may exercise the power of awarding interest in addition to the actual interest prevailing and the reason being that it is having the element of penalty and to set an example so as to create a deterrent effect.

The another aspect is of awarding interest as a compensatory measure. If on account of delay caused in paying retiral dues, including pension, may be because of the intentional delay or due to circumstances beyond the control of the authority, the fact remains that the actual amount of retiral dues/pension is not disbursed by the authority and consequently not made available to the concerned employee for its utilisation. Under these circumstances, the Court would be guided by the rate of interest prevailing in banks and other Government Securities. The judicial notice can be taken to the rate of interest which the Government is paying to the small saving schemes, Public Provident Fund, Govt. Employees Provident Fund etc. Such rate of interest prevail when the Government accepts the money of the public for its own purpose or as the deposits and the Government pays such rate of interest to the public. The normal rate of interest prevailing in such scheme in which the Government rather borrows the money from

the public or accepts the deposit from the public, may be in small savings scheme, PPF, GPF etc. is about 8% per annum. Even if the aspects of investment, which could have been made by the employee concerned on account of disbursement of the retiral dues well in time is kept aside, it cannot be disputed that the Government has utilised the amount, which was otherwise legitimately available to the concerned employee for the period during which the disbursement is delayed. Therefore the concerned employee would be entitled to claim the legitimate interest as prevailing in the Government schemes for the period during which the delay is caused in disbursing of the amount.

7. If the present case is examined in light of the aforesaid two aspects, it does appear that it is not the case where interest deserves to be awarded as a penal measure or by setting an example since it has not come on record that there was any intentional delay on the part of the authority in fixing the pension, more particularly, when the dispute was for counting the period of service of the petitioner from 08.07.1971 to 31.07.1976.

8. However, so far second aspect is concerned, the petitioner would legitimately be entitled to the interest as a compensatory measure. As observed earlier, since 8% is the prevailing rate of interest even in the aforesaid schemes of the Government, the petitioner would be entitled to the interest @ 8% from 01.06.2002 till 01.09.2005 on the amount of difference of pension. However, such interest will become due not

as prayed by the petitioner but would be payable on the basis on actual pension, which otherwise have been released or disbursed by the respondent authority as per the last order passed for re-fixation of the pension. To say in other words, the interest @ 8% will be calculated on the difference of the amount of pension as it may have fallen due from time to time every month and the payable amount of interest shall be paid to the petitioner within a period of three months from the receipt of the order of this Court.

9. Petition is partly allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances, there shall be no orders as to cost.

(JAYANT PATEL, J.)

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